IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER No. 678 of 2006

M/s.B.J. Enterprises .. Appellant

versus

Ramdas Dattatraya Naik & ors. .. Respondents

...

Mr.A.K. Abhyankar Sr.Counsel with Mr.Vineet B.Naik and Mr.Ali Murtaza i/b M/s.Law Charter for the appellant.

Mr.M.M.Vashi with Santosh Narwade for respondent no.1

Mr.G.S. Hegde for respondent nos.3 and 4.

**CORAM : D.G. KARNIK, J**

**DATED : 12th October 2006**

**P.C.:**

1. Heard learned counsel for the appearing parties. Respondent no.2 is absent though served. By consent, the appeal is finally heard at the stage of admission.

2. Respondent no.1 was the owner of

agricultural lands bearing Survey numbers 167, 90, 91 and 92 situate at Village Wahal, Taluka, Panvel, Navi Mumbai. The lands of respondent no.1 were acquired by respondent nos.3 and 4 - CIDCO - for the purpose of establishment of a new township. Under the scheme of CIDCO, the respondent no.1 was entitled to be allotted in the new township on leasehold basis plot/plots to the extent of 12.5% area of the land acquired.

3. The respondent no.1 agreed to assign to the respondent no.2 his rights in the new plot of land to be allotted to him. Subsequently, with the consent of respondent no.2, by an agreement styled as "Memorandum of Understanding" (for short "MOU") dated 21st November 2003 the respondent no.1 agreed to assign to the appellant his lease hold interest in the plot which would be allotted to him by CIDCO. Respondent no.2 joined the said agreement as the confirming party. Under the MOU, the appellant agreed to pay to the respondent no.1 consideration of Rs.15 lakhs for assignment of the land.

4. On or about 4th July 2006, CIDCO issued a letter of allotment of the suit land to the

respondent no.1. According to the appellant, it immediately approached the respondent no.1 for execution of a proper deed of assignment. However as the respondent no.1 evaded to execute the deed of assignment and to complete the necessary formalities of obtaining of the permission of CIDCO for assignment, the appellant filed a suit bearing Special Civil Suit no.393 of 2006 in the Court of Civil Judge, Senior Division, Panvel for specific performance of the MOU. CIDCO, being the lessor, was joined as a formal party to the said suit. In the suit, appellant applied for an interim injunction restraining the respondent nos.1 and 2 from selling, transferring, assigning or otherwise dealing with the suit land pending decision of the suit. By an order dated 14th September 2006, the learned Civil Judge, rejected the application of the appellant. That order is impugned in this appeal.

5. The application for injunction filed by the appellant was resisted by respondent no.1 on several grounds. The respondent no.1 pleaded that he had already agreed to assign his leasehold interest to Mr.Ambavane and Mr.Ghosalkar, by an earlier agreement dated 3rd July 2001. The said Mr.Ambavane and

Mr.Ghosalkar had filed a suit bearing Special Civil Suit No.304 of 2006 against the respondent no.1 for specific performance on 4th July 2006. In the said suit consent decree was passed on 18th July 2006 and under the consent decree, the respondent no.1 was bound to execute a sale deed/deed of assignment in favour of Mr.Ambavane and Mr.Ghosalkar. The trial court further held that appellant had the knowledge about the consent decree and therefore, the appellant ought to have joined them as parties to the suit. Since they were not joined as parties the suit was barred in law and the appellant had not entitled to an injunction.

6. It may be noted at this stage that the trial court has not dismissed the application for injunction on merits. The trial court has not held that respondent no.1 had not entered into an agreement for sale/assignment with the appellant on 21st November 2003. The trial court has not held that the appellant was not ready and willing to perform its part of the contract. The only ground on which the application for injunction has been rejected is that Ambavane and Ghosalkar were necessary parties to the suit and since they have not

been joined as parties, the suit was not prima facie maintainable and therefore the appellant was not entitled to an interim relief of injunction.

7. In my view, the question whether Ambavane and Ghosalkar are necessary parties to the suit is an arguable question. Mr.Abhyankar for the appellant urged before me that Ambavane and Ghosalkar are not real purchasers but were nominees of the respondent no.1 who had put them up only for the purpose of defeating the claim of the appellant. There was no agreement between the respondent no.1 on one hand and Ambavane and Ghosalkar on the other hand. There was a collusion between respondent no.1 on one hand and Ambavane and Ghosalkar on the other hand. This was apparent on the face of it. CIDCO issued a letter of allotment to the respondent no.1 on 4th July 2006. On the very day, Ambavane and Ghosalkar filed a suit for specific performance. Ambavane and Ghosalkar would have had no knowledge of the letter of allotment issued by CIDCO but for the same being disclosed by respondent no.1 himself as the suit was filed on the same day of the issuance of the letter of allotment. The suit was not decided on merits but was compromised within two weeks of filing of the

suit. This would show that there was a collusion between respondent no.1 and Mr.Ambavane and Mr.Ghosalkar. Since the suit of the appellant is not yet heard, this argument is not yet tested on the evidence. At this stage it cannot be decided whether there was a collusion between respondent no.1 and Mr.Ambavane and Mr.Ghosalkar. Suffice it to say that there is an allegation of collusion between respondent no.1 on one hand and Mr.Ambavane and Mr.Ghosalkar on the other hand. If such collusion is proved, it may be necessary to consider whether Mr.Ambavane and Mr.Ghosalkar at all are necessary parties.

8. Secondly, it must also be noted that no interest in favour of Mr.Ambavane and Mr.Ghosalkar is as yet correct. They only had an agreement of sale in their favour. They filed a suit - collusive or otherwise - and have obtained a decree for specific performance. The decree is not yet executed. Conveyance or assignment of lease has not yet taken place. No transfer of an interest in the suit property has yet taken place. In the circumstances, though Mr.Ambavane & Mr.Ghosalkar may be proper parties, it is doubtful whether they are necessary

parties to the suit. At the most they may be able to contend that the decree passed in this suit is not binding on them.

9. Learned counsel for respondent no.1 submits that granting of an injunction would affect him prejudicially. Under the agreement with Mr.Ambavane and Mr.Ghosalkar, respondent no.1 was entitled to a consideration of rs.12 lakhs. Under the agreement with the appellant, the respondent is entitled to a higher consideration of Rs.15 lakhs. Therefore by being required to perform the agreement in favour of the appellant, he would receive higher consideration and his interest would not be affected prejudicially. Mr.Ambavane and Mr.Ghosalkar consider that their interest would be affected, they are free to apply to the trial court for joining them as parties to the suit or intervening in the matter and if such an application is made, trial court would pass an appropriate order under Order 1 Rule 10 of C.P.C. or permit them to intervene. That would sufficiently protect their interest also.

10. Mr.Vashi submitted that Mr.Ambavane and Mr.Ghosalkar have further agreed to sell the

leasehold interest of the property in favour of a third party viz. M/s.Yash Enterprises. We are not concerned in this appeal with the claim of the third party. If they also have a claim in the suit and make application to the trial court for joining themselves as parties to the suit, the court may appropriately consider it.

11. Mr. Vashi then submitted that in the event injunction is granted, the injunction should be conditional and the appellant may be put to terms. He submitted that sine the appellant has made an alternative claim of damages to the extent of Rs.85 lakhs, he may be directed to deposit Rs.85 lakhs in the court. Agreed price which the appellant would be required to pay to the respondent is Rs.15 lakhs minus the consideration, if any, already paid. Since there is some dispute as to the amount which is already paid, even if that money is ignored, maximum amount that would be required to be paid to the respondent no.1 would be Rs.15 lakhs. In my view, therefore, security of Rs.15 lakhs would be sufficient. Mr.Abhyankar, learned counsel for the appellant states that appellant is willing to deposit Rs.15 lakhs in the trial court. The appellant

through their advocate undertake to do so within a period of six weeks. Undertaking is recorded and accepted. In my view, this would sufficiently protect the interest of the respondent no.1.

12. For these reasons, the appeal is allowed. Impugned order is set aside and respondent no.1 is restrained by an order of injunction from selling, transferring, assigning or otherwise dealing with lease hold interest or parting with the possession of the suit property subject to the appellant depositing in the trial court a sum of rs.15 lakhs within a period of six weeks. The injunction shall stand automatically vacated in the event the appellant fails to deposit the money within six weeks. On such deposit, money shall be invested in a nationalised bank of the choice of the appellant, if such choice is indicates at the time of deposit, or else in the State Bank of India.

**(D.G. KARNIK, J)**